

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6078

PETITION OF FRAYDA AND DENNY PENINI
(Hearing held June 22, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, August 10, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(2)(c). The existing accessory structure (shed) requires a two (2) foot variance as it is within three (3) feet of the side lot line. The required setback is five (5) feet.

The petitioners were represented at the public hearing by Miriam Daniel, Esquire.

The subject property is Lot 33, Block C, Willerburn Acres Subdivision, located at 11913 Seven Locks Road, Potomac, Maryland, 20854, in the R-90 Zone (Tax Account No. 00113465).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. An existing accessory structure/shed is located in the southern side yard setback.
2. Ms. Daniel stated that the petitioners purchased the property in December 2003, and that at that time of purchase, the property had an existing 14 x 12 foot shed located in the southern side yard. Ms. Daniel stated that the previously built shed was a legally built structure that met the required setbacks.
3. Ms. Daniel stated that the prior shed was in need of repair and that the petitioners demolished and rebuilt a 14 x 18 foot shed on the footprint of the prior shed. Ms. Daniel stated that required setbacks for accessory structures in the R-90 Zone have changed, and that the new shed requires a variance.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property and that their lot is similar in size and shape to the other properties in the neighborhood. Petitioner presented no evidence as to the uniqueness of the lot. See, Exhibit No. 8 [zoning vicinity map].

The Board notes that for purposes of evaluation for the grant of a variance that "the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property." (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of two (2) feet from the required five (5) foot side lot line setback for an existing accessory structure/shed is denied.

The Board adopted the following Resolution:

Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution. On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Wendell M. Holloway, and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.



Allison Ishihara Fultz

Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 10th day of August, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.